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FEDERAL COMMUNICATIONS COMMISSION REPORTS
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Pages 665 to 704

Reported by the Commission

FEDERAL COMMUNICATIONS COMMISSION

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H. REX LEE
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F.C.C. 72-692

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of ATLANTIC VIDEO CORP., ASSIGNOR (1) AND BLONDER-TONGUE BROADCASTING CORP. For Assignment of CP of Station WWRO-TV, Newark, N.J.	BAPCT-499

JULY 26, 1972.

Mr. ALBERT FLOERSHEIMER, Jr.,
Atlantic Video Corp.,
Mayfair House,
Deal Road,
Oakhurst, N.J. 07755

Mr. ISAAC S. BLONDER,
Blonder-Tongue Broadcasting Corp.,
One Jake Brown Road,
Old Bridge, N.J. 08857

GENTLEMEN: On July 26, 1972, the Commission granted the assignment of the construction permit of Station WWRO-TV, Newark, New Jersey, from Atlantic Video Corp. to Blonder-Tongue Broadcasting Corp. (BAPCT-499).

In reviewing the application, the Commission, in light of Section 311 (c) of the Communications Act of 1934, as amended, and Section 1.597 of the Commission's Rules, has denied the Assignor's arguments favoring reimbursement of expenses incurred with regard to Channel 58, Asbury Park, New Jersey. The Commission's grant of the above-mentioned application is conditioned on the total consideration sought for the assignment being limited to those expenses stated, in the application, to have been prudently and legitimately expended solely for the preparing, filing, and advocating the grant of the construction permit for Station WWRO-TV (Channel 68), Newark, New Jersey, and for other steps reasonably necessary toward placing the station in operation, namely $252,099. The grant fee will be 2% of the above amount.

Chairman Burch was absent; Commissioner Wiley concurring in the result; Commissioner Hooks not participating.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary*.

109-007—72

F.C.C. 72-691

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application by BLONDER-TONGUE BROADCASTING CORP., OLD BRIDGE, N.J. For Subscription Television Authorization	BSTV-6

JULY 26, 1972.

BLONDER-TONGUE BROADCASTING CORP.,
One Jack Brown Road,
Old Bridge, N.J. 08857

GENTLEMEN: This is to advise you that the Commission has this day granted your application (BSTV-6) for authority to operate a subscription television station on channel 68, Newark, New Jersey. This letter will serve as your authorization. The technical system to be used will be the "BTVision" system approved by the Commission on July 30, 1971. This authorization will be void in the event that the assignment of the permit for station WWRO(TV) from Atlantic Video Corp., to you is not consummated.

Since station WWRO will operate as the only local commercial television outlet for Newark, the provisions of paragraph 177 of the Commission's *Fourth Report and Order* in Docket No. 11279, 15 FCC 2d 466 (1968) are applicable. Inasmuch as you propose to broadcast 14 hours a week of local programming between the hours of 6:00 p.m. to 11:00 p.m., it appears that a minimum of 3½ hours of local programming will be broadcast during prime time hours (7:30 p.m. to 11:00 p.m.). This would comply with the requirements of the *Fourth Report and Order*, supra. Therefore, grant of your STV authorization is conditioned on your broadcasting a minimum of 3½ hours of local programming per week during prime time hours.

The term of this authorization is governed by Section 73.642(d) of the Commission's rules.

Chairman Burch was absent; Commissioner Wiley concurring in the result; Commissioner Hooks not participating.

BY DIRECTION OF THE COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-734

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of CONTEMPORADIO, INC. (ASSIGNOR) AND MID AMERICA BROADCASTING, INC. (ASSIGNEE) For Assignment of License of Station KYNA(FM), Des Moines, Iowa	File No. BALH-1620

ORDER

(Adopted August 16, 1972; Released August 22, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING. COMMISSIONERS H. REX LEE, REID AND WILEY ABSENT. COMMISSIONER HOOKS ABSTAINING FROM VOTING.

1. The assignee is fully qualified. The application is governed by the Commission's Three-Year Rule.

2. Assignor, Contemporadio, Inc., has suffered operating losses of $61,658 in the first 14 months that it operated FM Station KYNA. The three principal stockholders (26.6% each) of assignor have clearly shown unavailability of capital in their personal balance sheets with net worths of $3,000, $3,750 and a negative net worth of $16,784, respectively. This is the first broadcast venture of the assignor's principals. There is no evidence of trafficking. The assignee is a very financially sound, experienced broadcaster. In view of the above, a hearing on the Three-Year Rule is not indicated.

3. A grant of this application will serve the public interest, convenience and necessity. Therefore, pursuant to Section 0.281 of the Commission's Rules, the above application IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
GARY M. SUKOW
For Interpretive Ruling Re Fairness Doctrine

AUGUST 22, 1972.

MR. GARY M. SUKOW,
Director, Broadcast Services,
412 Congressional Hotel,
Washington, D.C. 20003

DEAR MR. SUKOW: This is in reply to your letter of July 17, 1972 in which you ask for a clarification of paragraphs 38 and 39 in the Commission's *First Report, The Handling of Public Issues Under the Fairness Doctrine and the Public Interest Standards of the Communications Act*, Docket Number 19260, released June 22, 1972.

In your letter you state that the National Republican Congressional Committee operates an SOF camera crew and an audio feed service for the benefit of Republican Members of the House of Representatives; that occasionally a local news director of a station will interview a Congressman by telephone or submit questions to him in advance of an interview; and that under this procedure the newsman controls the editorial content while the Committee provides only the technical equipment.

You ask whether the statement in paragraph 38 that the ". . . public should be informed that the tape or film was supplied by the candidate as an inducement to the broadcasting of it" means that public disclosure is required only when the physical film or tape is furnished or whether public disclosure is limited to situations where the Candidate is the originator of the editorial content of the tape or film.

The Commission's rules provide that the public should be informed when any "records, transcriptions, talent, scripts, or other material or services of any kind are furnished" by a candidate as an inducement to the broadcasting of the program. Furthermore, the rule requiring that the licensee broadcast a disclosure that material or services are supplied by the candidate is not limited to situations where the supplier has complete control over editorial content. It provides, 47 CFR § 73.119(d):

(d) In the case of any political program or any program involving the discussion of public controversial issues for which any records, transcriptions, talent, scripts, or other material or services of any kind are furnished, either directly or indirectly, to a station as an inducement to the broadcasting of such program, an announcement shall be made both at the beginning and conclusion of such program on which such material or services are used that such records, transcriptions, talent, scripts, or other material or services have been furnished to such station in connection with the broadcasting of such program: *Provided*

however, That only one such announcement need be made in the case of any such program of 5 minutes' duration or less, either at the beginning or conclusion of the program.

When the Committee provides technical equipment it is furnishing "material or services" within the meaning of the rule. It appears, therefore, that a disclosure that the candidate furnishes the tape or film is required when the Committee makes available a camera crew or audio feed service for Republican House Members.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
WOMEN FOR THE UNBORN
AND
CELEBRATE LIFE COMMITTEE LONG ISLAND
Concerning Fairness Doctrine re Station
WCBS–TV, New York, N.Y.

AUGUST 22, 1972.

EUGENE J. MCMAHON, Esquire,
Bank Building,
103–42 Lefferts Boulevard,
Richmond Hill, N.Y. 11419

JOHN NAPPI, Esquire,
Celebrate Life Committee Long Island,
Post Office Box 39,
Huntington Station, N.Y. 11746

GENTLEMEN: This is in reference to Mr. McMahon's letter of February 10, 1972, filed on behalf of Women for the Unborn, and to Mr. Nappi's letter of February 8, 1972 filed on behalf of Celebrate Life Committee Long Island, concerning Station WCBS–TV, New York City. It appears that on January 11, 1972, the station broadcast a program entitled "Woman" which you contend presented a pro-abortion viewpoint.

It further appears that Mr. McMahon's request to CBS on behalf of Women for the Unborn for "fairness time" to rebut the alleged pro-abortion viewpoint on the January 11 program was denied. The reply from CBS, which Mr. McMahon enclosed with his letter, stated that it had denied his request on the grounds that the discussion on "Woman" was intended to explore a pending court proceeding and the pre-trial ramifications of the court's action in temporarily prohibiting abortions in city facilities and did not, in CBS's view, raise the abortion question as a controversial issue of public importance. CBS also stated that WCBS–TV had invited representatives of Celebrate Life Committee, Birthright, and Women for the Unborn to appear on a tentatively scheduled February 7, 1972 broadcast of "Woman." Women for the Unborn seek a determination that CBS has erred, and that under Section 315 of the Communications Act CBS must provide one-half hour fairness time.

In a letter to the Commission dated February 8, 1972, the Celebrate Life Committee stated that on February 7, 1972, a member of Women for the Unborn, together with a member of the Celebrate Life Committee, appeared on "Woman" and were allowed seven minutes total time to discuss the issue from the anti-abortion viewpoint, while four-

teen minutes were permitted for the pro-abortion viewpoint. Celebrate Life Committee contends that "not only did the opposite view of the January 11 program not get presented . . ." but that there were fourteen minutes of pro-abortion time "against the seven minute anti-abortion time," and this constituted a violation of the fairness doctrine.

The fairness doctrine applies to all broadcasts of controversial issues of public importance, and if a licensee presents one side of such an issue he must afford reasonable opportunity for the presentation of contrasting views. The fairness doctrine does not require that "equal time" be afforded for each side, but that the licensee afford reasonable opportunity for the presentation of views in its overall programming.

In applying the fairness doctrine the licensee is called upon to make reasonable judgments in good faith on the facts of each situation, including whether a controversial issue of public importance is involved, what viewpoints have been or should be presented, and the format and spokesmen to present the viewpoints. The Commission's role is to determine whether the licensee can be said to have acted reasonably and in good faith.

The Commission has stated that the "critical issue is whether the sum total of the licensee's efforts, taking into account his plans when the issue is a continuing one, can be said to constitute a reasonable opportunity to inform the public on the contrasting viewpoints—one that is fair in the circumstances." *Committee for the Fair Broadcasting of Controversial Issues*, 25 F.C.C. 2d 283, 295 (1970). It is clear that in the context of continuing issues the fairness doctrine does not require a response to an individual speech or presentation, but only a reasonable opportunity over a reasonable period of time.

Before we can determine whether a licensee has complied with the fairness doctrine, a complainant must present specific detailed information to support a claim that a licensee in its overall programming has failed to comply with the fairness doctrine with regard to specific issues.

As to the "Woman" program of February 7, 1972, a member of Women for the Unborn appeared on the program with a representative of another organization in opposition to abortion, and were afforded seven minutes in which to present the anti-abortion viewpoint. The station therefore did provide a reasonable opportunity for the spokesmen on this side of the issue. The fairness doctrine requires no more. We note, in addition, that the claim that fourteen minutes of pro-abortion views were carried is not supported; thus you have stated no more with respect to the gentleman from the Louise Weiss Home for Unwed Mothers than that he had seven minutes and indicated that abortion was a service of the home. You have not stated or demonstrated that the entire seven minutes were devoted to a pro-abortion viewpoint. In any case, as noted above, the program did afford reasonable presentation for contrasting views on the abortion issue.

In regard to the "Woman" program of January 11, 1972, as indicated above, CBS has stated that the program was an exploration of a pending court proceeding and the pre-trial ramifications of the court's action in temporarily prohibiting abortion in city facilities

and did not raise the abortion issue as a controversial issue of public importance. You state that the program presented individuals who "projected and espoused the pro-abortion cause"; that the decision of the court was, in effect, an anti-abortion one; and that the program "presented only the viewpoints of the losers." However, initially a complainant bears the burden of proof and you have presented no information to support your contention that the program was "one-sided."

In any event, with respect to the applicability of the fairness doctrine to both programs, you have not shown that CBS in its overall programming has failed to afford reasonable opportunity for the presentation of contrasting views. Thus, no determination can be made at this time as to whether, in its treatment of the abortion issue, CBS has failed to comply with the fairness doctrine. Should you provide the necessary information, further consideration will be given your complaint. (See page 10416 of the enclosed Public Notice of July 1, 1964 entitled "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance.")

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 72-693

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Applications of: NACHUSA CORP., WEBSTER CITY, IOWA PBW BROADCASTING CORP., WEBSTER CITY, IOWA Request by Whitesell Broadcasting Co. for waiver of Section 73.35(a) of the Commission Rules	File No. BAL-7504 File No. BALH-1626

JULY 26, 1972.

Mr. JOHN P. WHITESELL,
Whitesell Broadcasting Co.,
519 College Street,
Iowa Falls, Iowa 50126

Mr. J. J. DONNELLAN,
Nachusa Corp.,
113 Peoria Avenue,
Dixon, Ill. 61021

Mr. DWIGHT M. BROWN,
PBW Broadcasting Corp.,
308½ Stevens,
Iowa Falls, Iowa 50126

GENTLEMEN: On July 26, 1972, the Commission considered Whitesell Broadcasting Company's request for waiver of Section 73.35(a) of the Commission's Rules with respect to the applications for consent to assign the license of Station KJFJ, Webster City, Iowa, from Nachusa Corporation to Whitesell Broadcasting Company (BAL-7504) and the license of Station KWAW-FM, Webster City, Iowa, from PBW Broadcasting Corporation to Whitesell Broadcasting Company (BALH-1626).

In reviewing the applications, the Commission, in light of the history of Section 73.35(a) of the Commission's Rules, denied the Assignee's waiver request of the duopoly provisions of that rule because of the extensive overlap of the subject station, KJFJ, with the Assignee's other station, KIFG, Iowa Falls, Iowa. The overlap in question accounts for 52.9% of the total area and 37.5% of the population within the 1 mv/m contour of KJFJ and 24.9% of the total area and 18.8% of the population within the 1 mv/m contour of KIFG. While the Commission has waived the duopoly provisions in the past where the overlap was *de minimus*, the extensive nature of the overlap did not warrant such action in this case.

109-007—72——2

Since the above-mentioned applications were contingent upon each other and predicated on the success or failure of the Assignee's waiver request, that request being denied, the applications were dismissed.

Chairman Burch was absent; Commissioner Robert E. Lee dissenting; Commissioner Johnson concurring in the result; Commissioner Hooks not participating.

By Direction of the Commission,
Ben F. Waple, *Secretary.*

F.C.C. 72-676

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application by PEACE BROADCASTING CORP., STATION WYNG, GOLDSBORO, N.C. For relinquishment of negative control	BTC-6796

JULY 26, 1972.

JOSEPH M. WHITEHEAD, Esq.,
Post Office Box G,
Chatham, Va. 24531

DEAR MR. WHITEHEAD: This is with reference to the application for relinquishment of negative control of Peace Broadcasting Corporation, licensee of Station WYNG, Goldsboro, North Carolina, by Everett C. Peace, Jr., through the transfer of stock to Claude S. Whitehead, Jr., Floyd M. Fox, Jr., and yourself (File No. BTC-6796). The proposed transferor, Everett C. Peace, Jr. has not signed the application as required by Section 1.513 of the Commission's Rules and you request a waiver of the signature requirement.

In support of the waiver request you contend that Mr. Peace's signature is not necessary to effect the transfer in view of the nature of the transaction. As escrow agent, you hold 500 shares of stock of the licensee, which Mr. Peace had pledged as security for a $50,000 loan allegedly made to the corporation by you and the other two minority stockholders. You allege that the corporation has defaulted on the loan and that, under the terms of the agreement among Mr. Peace and the secured parties, you, as escrow agent, are entitled to transfer the stock on the books of the corporation to yourself and the other minority stockholders in full satisfaction of the debt. You have also taken the precaution of securing a confessed judgment against Mr. Peace. In addition, you have caused the stock to be sold at a bona fide public auction at which the secured parties were the highest bidders. Thus, the final step to be taken in foreclosure on the security interest is the distribution of the stock by you, as escrow agent, to yourself and the other secured parties and the transfer of the stock on the books of the corporation. You further contend that since cooperation by Mr. Peace is not required at any point of the above stock transfer procedure, his cooperation in signing the application seeking the Commission's consent to the transfer should not be required.

After learning of the pending application, Mr. Peace, through counsel, has requested that the Commission dismiss or withhold action on the application. He asserts that an application which has not been signed by the transferor is defective and ought to be dismissed. He has also supplied the Commission with a copy of a complaint which

he has filed in a North Carolina state court against the corporation and the three minority stockholders. The complaint alleges that the secured parties never fulfilled their agreement to lend the corporation $50,000. As relief Mr. Peace seeks, *inter alia*, a preliminary injunction and a permanent injunction to restrain the transfer of the stock, the appointment of a temporary receiver and damages. Therefore, he asserts that, at the least, action on the application should be withheld pending the outcome of the suit.

In response you have represented that you are willing to assume the risk of consummating the transaction during the pendency of the suit; or, that you would be willing to accept a grant of the application conditioned on the outcome of the suit. In either case you state that you would be ready to restore the *status quo ante* should it become necessary. You further represent that the station is badly in need of additional capital and that you and the other minority stockholders are reluctant to provide such capital until Commission approval of the transfer application has been obtained.

In the Commission's view, the application is defective unless signed. The question of whether you, as escrow agent, have authority to transfer the stock is purely a matter of state law. Since a suit is pending which would apparently be determinative of this issue, a grant of the application, even a conditional grant, might tend to influence the court in determining what relief, if any, should be accorded.

In view of all of the above, your request for a waiver of Section 1.513 of the Rules is hereby denied, and the application is dismissed as defective for lack of proper signature. You are free to refile the application, however, at such time as the North Carolina court enters an order directing Mr. Peace to cooperate in the application (see *William Penn Broadcasting Company*, 15 RR 2d 1075 (1969)), or a final decision, determinative of the rights of the parties, is handed down. You may also request that the $250 filing fee which has been paid in connection with the application be applied to the refiled application.

You are cautioned that unless and until the Commission approves the relinquishment of negative control of the licensee corporation by Mr. Peace, he must retain the full voting rights of his 500 shares of stock.

Chairman Burch was absent; Commissioner Hooks not participating.

By Direction of the Commission,
Ben F. Waple, *Secretary*.

F.C.C. 72-735
80246

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR WAIVER OF THE "PRIME TIME ACCESS RULE" IN CONNECTION WITH CBS AUGUST 25 FOOTBALL TELECAST (STATION KOOL-TV, PHOENIX, ARIZ.)

MEMORANDUM OPINION AND ORDER

(Adopted August 16, 1972; Released August 18, 1972)

BY THE COMMISSION: COMMISSIONER ROBERT E. LEE CONCURRING IN PART AND DISSENTING IN PART; COMMISSIONER JOHNSON ABSTAINING FROM VOTING; H. REX LEE, REID AND WILEY ABSENT.

1. The Commission here considers a letter request for one-time waiver of the "prime time access rule", Section 73.658(k) of the Commission's Rules, dated July 13, 1972, filed by the licensee of Station KOOL-TV, Phoenix, Arizona, CBS-affiliated. The request—the first specific request from this station—is in connection with a CBS pro football telecast on Friday, August 25, 1972, when CBS will preempt its regular programming after 9 p.m. E.T. to present this game (CBS will present from 8 to 9 before the game, in the Eastern and Central zones, the regular program "O'Hara, U.S. Treasury"). The game telecast will start at 6 p.m. Mountain *Standard* time (which is observed in Phoenix), and thus all of the game—approximately three hours—will occur during prime time in Phoenix (all Phoenix stations observe 6-10 p.m. as prime time). KOOL-TV requests that the rule be waived to permit an additional hour on that evening, so that it can telecast the "O'Hara, U.S. Treasury" program after the game, from about 9 to 10 M.S.T.[1] In the alternative KOOL-TV asks that at least the Commission grant waiver of the rule to the extent necessary to permit completion of the game telecast, even if it should run slightly over 3 hours.

2. In support of its request, KOOL-TV states that this is its first request, that affiliates in other time zones can carry both of these CBS programs without conflict with the rule and KOOL-TV should be accorded the same privilege, and that it does not see how it can fill the 9-10 p.m. period with non-network material of prime-time caliber or material that would even approach being competitive with the network

[1] KOOL's proposal is to move its usual local news from 6 back to 5:30 and cancel a 6:30 syndicated program, and carry the game from 6 to 9, and the additional CBS program from 9 to 10.

material being run on the ABC and NBC affiliates at that hour. In connection with its second request, KOOL–TV points out that we recently adopted a change in the rule, as to the Mountain time zone, which will regularly permit this starting October 1, 1972 (Docket 19475); and that the same thing should apply by waiver at this earlier date.

CONCLUSIONS

3. Upon consideration of the KOOL–TV request, we are of the view that it should be granted, taking into account all of the pertinent circumstances, including: (1) the "one-time" nature of this request, and that it is the first specific request by this station for permission to deviate from the requirements of the rule (KOOL–TV was one of the parties which in 1971 sought a redesignation of prime hours in the Mountain time zone to 6–10, but has made no other requests for waiver); (2) the fact that the programming schedule proposed is one which will be consistent with the rule in the vast majority of the markets in the United States, the problem here resulting from the fact that Arizona is one of the few areas in the United States not observing daylight saving time; and (3) the fact that this is still within the first, or "transitional", year of operation under the rule, when it is not yet in full effect. Grant of this request is not to be taken as indication that similar waiver would be granted in the absence of one or more of these circumstances.

4. Accordingly, IT IS ORDERED, That Station KOOL–TV MAY CARRY during prime time, on Friday, August 25, 1972, the professional football game telecast carried on the CBS network, plus another hour of CBS network material.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72–736

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST FOR "ONE-TIME" WAIVER OF THE PRIME TIME ACCESS RULE (SECTION 73.658(k)) BY STATION WZZM–TV, GRAND RAPIDS, MICH.

MEMORANDUM OPINION AND ORDER

(Adopted August 16, 1972; Released August 18, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS H. REX LEE, REID AND WILEY ABSENT.

1. The Commission here considers a "one-time" request for waiver of the Prime Time Access Rule (Section 73.658(k)) filed on August 11, 1972, by the licensee of Station WZZM–TV, Grand Rapids, Michigan (ABC-affiliated). The request is for Sunday, August 20, 1972; and it arises from the fact that Grand Rapids does not observe daylight saving time and therefore material running on the network at the usual Eastern zone time (8 p.m. E.D.S.T., etc.) is one hour earlier in terms of Grand Rapids local time. Specifically, ABC's lineup on this occasion includes the "FBI" program starting at 8 p.m. E.D.S.T. or 7 p.m. Grand Rapids time, and then a movie which will run from 9 to 11:15 p.m. E.D.S.T., or 8 to 10:15 p.m. Grand Rapids time. Thus, if it carries the regular ABC lineup, this station would, because of its unusual time situation, exceed by 15 minutes the three-hour limit on prime time network programs contained in Section 73.658(k).[1] In other Eastern zone markets, the programming would comply with the rule.

2. The situation here does not fall exactly within the principle of the cases cited in footnote 1. The general action with respect to Indianapolis involved re-designation of prime hours for an entire six-month period, the stations thus committing themselves to treating the modified four-hour segment as prime hours on all nights of that period. The June 1972 action referred to related only to sports events, which generally are carried simultaneously throughout the United States and thus, if this practice is to be followed, must start at 7 p.m. in Grand Rapids when they start at 8 p.m. elsewhere in the East. It does not appear that either of these circumstances prevails here, since the ABC

[1] As WZZN points out, the Commission has recognized this rather anomalous time situation, prevailing in Detroit and Indianapolis as well as Grand Rapids, in two earlier actions this year. In one, we granted Indianapolis' ABC and CBS affiliates permission to redesignate their prime hours during the whole daylight-saving time part of the year (late April till late October). In the second (*National Broadcasting Company, Inc.*, 35 FCC 2d 426 (June 1972)) we granted NBC, and its affiliates in these three markets, waiver to accommodate any "runovers" of baseball games which start at 8 p.m. E.D.S.T. but 7 p.m. in these markets.

movie, which is what makes the waiver request necessary, could conceivably be started at 9 instead of 8 p.m. Grand Rapids time.

3. Nevertheless, taking into account the "one-time" nature of this request, the fact that this is still in the first or "transitional" year of operation under the rule, and, of some importance, the fact that only a 15-minute "overrun" is involved, we are of the view that the requested waiver should be granted. The small impingement into the availability of prime time to non-network sources, which would be involved, is outweighed by the inconvenience to the station and the public which would result from the change in scheduling which would be required by literal application of the rule.

4. In view of the foregoing, IT IS ORDERED, That Station WZZM–TV, Grand Rapids, Michigan, MAY CARRY ABC network programs on Sunday, August 20, 1972, to the extent of 3 hours 15 minutes during prime time (7–11 p.m. E.D.S.T., 6–10 p.m. Grand Rapids time).

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-737

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
REQUEST BY STATION KSL-TV, SALT LAKE CITY, UTAH, FOR EXEMPTION FROM THE PRIME TIME ACCESS RULE (SECTION 73.658(k)) FOR 1972-73

MEMORANDUM OPINION AND ORDER

(Adopted August 21, 1972; Released August 23, 1972)

BY THE COMMISSION: CHAIRMAN BURCH DISSENTING; COMMISSIONERS REID AND HOOKS NOT PARTICIPATING; COMMISSIONER WILEY ABSENT.

1. The Commission here considers a letter request filed August 2, 1972 by the licensee of Station KSL-TV, Salt Lake City, Utah (CBS-affiliated) for exemption from the prime time access rule (Section 73.658(k)) for the 1972-73 year, which begins October 1, 1972. The request is put in alternative forms, and apparently would also apply to the other two stations in this market. The substance of the request is as follows:

(a) A Commission pronouncement that the rule does not apply to the Salt Lake City market, on the basis of recent ARB information (the February-March 1972 survey) which is claimed to show that Salt Lake City is the 52nd market rather than being in the top 50 markets of the United States to which the rule applies.

(b) If the first is not possible, waiver of the rule as to KSL-TV, entirely or for five nights of the week, to permit an additional half-hour of CBS network programs on three nights (Tuesday, Wednesday and Thursday) and an additional hour of such material Saturday and Sunday nights.

2. The various arguments advanced by KSL in support of its request may be summarized as follows:

(a) The "recent ARB material" referred to above and discussed in more detail below. KSL claims that, if this is not grounds for the general exemption for this market mentioned in (a) above, at least it is a circumstance which should be considered in connection with its waiver request.

(b) The fact that KSL had prepared its schedule of CBS and other evening programs on the assumption that 1972-73 prime time in the Mountain zone would be 7-11 p.m., as it has been in Salt Lake City during this first year of the rule's operation, and rearranging it now to comply with the new 6-10 p.m. rule would cause disruption, inconvenience to the public and hardship to KSL and CBS.[1]

[1] The 6-10 p.m. period was designated as prime time in the Mountain zone in the decision in Docket 19475, a proceeding instituted March 15, 1972 (FCC 72-240, released March 16) and decided June 28, 1972 (FCC 72-578, released July 6, 24 R.R. 2d 1972). As KSL points out, it was one of the few licensees to oppose the change from 7-11 p.m.; and it states that it may file shortly a petition for reconsideration. KSL attached to its petition a letter written to CBS on June 6, 1972, calling attention to the uncertainty as to Mountain zone hours and stating that if the Commission delayed its decision in Docket 19475 much longer, KSL would doubtless not need to comply with any new requirement in the 1972-73 season.

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It is claimed that, if the rule applies to KSL–TV, it is going to have to reschedule some CBS and other programs now planned for prime time, including some changes which may not be acceptable to CBS (such as presenting prime time CBS programs at 5 p.m. on weekends, allegedly less desirable time) and refraining from running some non-network programs and carrying others outside of prime time, which would mean less revenue than had been anticipated when the material was bought and which was the basis of the price paid.

(c) Although not specifically urging it as ground for waiver, KSL mentions that it would not exceed 21 hours a week of network prime time broadcasting no matter what the prime hours are; if they continue as 7–11 it would have only 17.5 hours a week and would still be under 21 hours even with a 6–10 prime time period.

3. *The ARB material mentioned by KSL.* KSL's "ARB material" referred to above, on which it relies as indicating that Salt Lake City should not fall under the rule, is a summary and analysis of ARB's February–March 1972 survey, which apparently was prepared from the ARB material by another party (PGW, the national representative for this and other television stations). The material lists ARB's figures for TV homes in the top 60 markets in two evening prime periods—7:30–11 and 8–11 (or 6:30–10 and 7–10 M.T.)—and ranks the markets on the basis of those figures (Salt Lake City is 52nd in both categories). It should be noted that this is *not* an ARB "ranking". The ARB "Television Market Analysis", the only regular publication by that firm which actually ranks the markets in order, formerly came out in the early spring (e.g. March 8, 1971), but was published again in November 1971 and, it appears, will be published in the late fall of each year in the future. On the basis of the last-mentioned publication and ranking, the Commission has issued, each year, lists of the top 50 markets to which the rule will apply in the next season. For the 1971–72 season, the Commission's list was issued April 15, 1971; for the coming 1972–73 season, it was issued March 16, 1972 (Public Notice, Mimeo No. 82714). The ARB February–March survey, the results of which apparenty were analyzed by the PGW firm in the material submitted by KSL, is one of three or more ARB surveys made in each market each year (the results of a more recent one, May–June 1972, have now been published). It contains a great deal of data, including the 7:30–11 and 8–11 p.m. figures for each market referred to above, but it does not rank the markets in order. It is, of course, possible for outside parties receiving this material to analyze it and determine for themselves the relative position of the markets covered, as some parties have done and PGW apparently has done here; but this is not the "prime time market ranking" referred to in the rule.[2]

4. *KSL's specific scheduling problems.* KSL goes into some detail as to its scheduling, and asserted problems, on each of the five nights of the week for which waiver is particularly requested. On *Sunday*, the station had planned to carry CBS material from 6 to 9, and the "Ponderosa" program, non-network now but recently on CBS, from 9 to 10. It is stated that the change in prime hours to 6–10 will require it to buy and present a one-hour local program to replace either

[2] The provision of the rules governing this matter is Section 73.658(k)(4), which states: The top 50 markets shall be determined on an annual basis as of September 1 according to the most recent American Research Bureau prime time market rankings (all home stations combined) throughout the United States.

one hour of CBS or the off-network "Ponderosa" material.[3] On *Tuesday*, the station carries local news from 6 to 6:30, the one-hour syndicated "U.F.O." program from 6:30 to 7:30, and CBS from 7:30 to 10. It is stated that under the new rule it will need the 7–7:30 slot for network material, to run from 7 to 10, and thus will have to get a "barter" or other program for the 6:30–7 period and delete "U.F.O." at this time. On *Wednesday*, it is stated that the station plans local news from 6 to 6:30, a half-hour of CBS from 6:30 to 7, a non-network movie from 7 to 9, and CBS again from 9 to 10. KSL states that some of the movies planned for the time slot mentioned are less than two years old; and therefore KSL will have to delete one of the half-hour CBS programs and procure a local barter or other program for it. *Thursday*, network programming from 6:30 to 10 is planned; a half-hour will now have to be deleted and replaced with a local program. On *Saturday*, network programming is planned from 6 to 10 p.m. The change in the rules will require deletion of an hour of this, specifically the 6–7 p.m. hour, which will be replaced with the syndicated "Hee-Haw" program, now carried from 5 to 6. KSL fears that CBS may not agree to a time as early as 5 p.m. for the network program now carried at 6.

DISCUSSION AND CONCLUSIONS

5. On consideration of the KSL request, we are of the view that it must be denied. Initially, as to the request for redesignation of the Salt Lake City market on the basis of certain ARB material, this is without merit. As pointed out above, the provision of the rule which defines "top 50 markets" reads in terms of "the most recent American Research Bureau prime time market rankings" before September 1. At the time the rule was adopted and first became effective, these rankings, contained in ARB's *Television Market Analysis*, appeared in the early spring; now they appear in late fall. To the extent that the rule as adopted may not have been completely clear on this score, the Commission has clarified the point by issuing, early each spring, a listing of the top 50 markets as contained in that publication, to which the rule will apply in the coming season. The material which KSL refers to, while it is based on ARB data, is not that referred to in the rule. The February–March 1972 and other ARB audience surveys do not contain market *rankings*, as such. It may be that the next ARB Television Market Analysis, which will be issued probably late in 1972, will rank Salt Lake City outside of the top 50, as the figures cited by KSL may tend to indicate; if so, the market will be exempt during the 1973–74 season, but it is included in the top 50 for this coming year.[4]

6. Likewise, we do not find grounds for waiver of the rule in either this circumstance, or the fact that the rules were changed as to prime

[3] In support of the asserted undesirability of having to buy and present non-network material, KSL asserts that this past year it bought the program "Primus" for $15,000, ran it for 13 weeks, and then took it off the air because it had no audience.

[4] To adopt what is implicit in KSL's argument—that market rankings be changed on the basis of what parties may glean in analyzing the various ARB audience surveys—would be highly undesirable. Either we would have to exempt markets from the rule without adding others—which would defeat the purpose of the rule to cover the top 50 markets, perhaps by as many as three or four—or we would have to add markets at the last minute, which would hardly be orderly or fair.

time in this zone, from 7–11 to 6–10, fairly recently. The rule making proceeding involved, Docket 19475, was begun in March 1972, more than six months before the rule would become effective and the decision to make the change was reached and made known June 30, three months before the effective date (the decision basically adopted what had been proposed in the Notice). Thus, KSL has had adequate notice as to what the Commission contemplated and as to the provisions of the rule which will govern for this coming year. KSL being the CBS affiliate in a three-station market, it does not appear likely that there will be problems in obtaining the consent of the network to whatever scheduling changes are involved.

7. KSL's other arguments relate essentially to private interests, consisting largely in the assertion that it is going to have to buy or otherwise secure non-network material to fill certain time slots. This is one of the basic purposes of the rules, to make valuable evening time in major markets available to non-network sources. To grant waiver on this ground would be to act in a fashion flagrantly and patently inconsistent with the rule. We note KSL's assertion that one attempt in this respect resulted in no audience for the non-network program; but this one, rather limited instance can hardly be held to be truly probative as to what may happen in the future, and, in any event, is an assertion more pertinent to repeal of the rule than to a request for waiver.

8. KSL also points out, without really arguing the point, that it will present less than 21 hours a week of network material, under any designation of prime hours. This concept has been rejected in the past (e.g., *American Broadcasting Companies, Inc.*, 33 FCC 2d 1038, March 1972) and the reasons need not be repeated here. While some change in the rules in the direction of this concept may be proposed for consideration in a Notice of Proposed Rule Making which is expected to be issued shortly, it is not grounds for waiver.

9. In sum, we have carefully considered all of the contentions urged in support of exemption from the rule for Station KSL–TV, and do not find grounds for waiver or other exemption.

10. In view of the foregoing, IT IS ORDERED, That the letter request for exemption from, or waiver of, the provisions of the prime time access rule (Section 73.658(k)), filed on August 2, 1972 by KSL, Incorporated (KSL–TV) IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72–739

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of AMENDMENT OF SECTION 1.580(m)(1)(iii) OF THE RULES, GOVERNING TEXT OF LICENSEE NOTICE TO PUBLIC OF BROADCAST RENEWAL APPLICATION FILINGS	RM–2026

MEMORANDUM OPINION AND ORDER

(Adopted August 22, 1972; Released August 23, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON CONCURRING IN THE RESULT; COMMISSIONERS H. REX LEE AND WILEY ABSENT.

1. The Commission has before it a petition for rule making filed June 22, 1972, by Black Efforts for Soul in Television ("BEST") seeking a corrective change in the language of Section 1.580(m)(1)(iii) of the rules which specifies the text of the announcement renewal applicants are required to broadcast and publish.

2. In connection with the filing of renewal applications, notice to the public is to be given in the form of an announcement that is both published and broadcast. The text of the notice is specified in Section 1.580(m)(1)(iii). The notice provides an invitation to members of the public to comment in writing on station performance, and specifies a deadline for submission of such comments. As the rule now reads, a renewal applicant is to specify a date 30 days after the last date for timely filing of the renewal as the deadline for filing such comments. This phrasing is used because notice is to be given before the application is actually filed. BEST asserts that the 30-day period for filing comments is inconsistent with the Commission's clear intentions in this regard and thus can mislead members of the public into believing that a petition to deny must be filed within 30 days although another provision [Section 1.580(i)] of the rules makes it clear that a 60-day period obtains for filing such a petition. BEST urges [1] us to act immediately to correct this error and to notify renewal applicants promptly so that they will not continue to utilize a notice form that is incorrect.

3. BEST is correct in its observation that the 30-day filing deadline is not consistent with other provisions of our rules or with our intentions in this regard. Inadvertently, when the deadline for filing a petition to deny a renewal application was changed [see 20 FCC 2d 191 (1969)] from 30 days following the filing of a renewal application to

[1] We are also asked to require licensees whose renewal applications are now on file to again give notice, this time specifying the correct period for filing comments, but BEST has not provided a basis for believing that the seriousness of the matter could justify such a requirement or that its benefits would outweigh the serious disruptive effects it would have on the orderly consideration of applications. Accordingly, this request will be denied.

60 days following the last day on which the renewal application could be timely filed, we did not make a change in the text of the notice renewal applicants were required to use. Thus, a corrective change in the text is clearly warranted. The rules applicable to various matters connected with renewal applications, including public involvement in the renewal application process, are currently being considered in a rule making proceeding now well under way in Docket No. 19153, 27 FCC 2d 697 (1971). Because of the simplicity of the relief sought here and the ease of its accomplishment, we do not consider it necessary or appropriate to make this matter a part of that proceeding. Although not directly a part of BEST's prayer for relief, the petition reveals that there are other real or apparent inconsistencies in the procedural rules applicable to public filings in connection with renewal applications. Essentially, these involve formal versus informal filings and the question of which is governed by what filing deadlines, if any. While clarification on these points is clearly in order, such a basic restructuring does not have the urgency of the matter now before us, and any attempt to deal with these other matters in this context could only disrupt the orderly and comprehensive review to be given these and other issues in Docket No. 19153. Therefore, we will defer such revisions for later consideration, observing only that petitions to deny are subject to the 60-day deadline specified in our rules and that public comment on station performance is welcome at any time regardless of the pendency of a renewal application.

4. The change here sought is corrective and is directed to the Commission's Rules of practice and procedure. Thus, under the Administrative Procedure and Judicial Review provisions of 5 U.S.C. 553 (b)(3)(A), prior notice of proposed rule making need not be given through publication in the Federal Register. Such publication would also have the serious effect of delaying the resolution of this matter and in so doing would have the effect of continuing a notice which misinforms members of the public about their opportunity to participate in the consideration of renewal applications. In addition to the urgency of the matter, the cause of the problem (our inadvertent failure to amend an affected rule) indicates that no useful purpose would be served by providing for the submission of comments, on the requested change. Ample opportunity for comment on the rules, of which the renewal notice text is but a reflection, has already been provided and was a part of the proceeding that led to the change in the dates for giving notice of renewal filings and for filing petitions to deny. Not only does this provide a basis under 5 U.S.C. 553(b)(3)(B) of the above Act for dispensing with prior notice, it also constitutes grounds for making the rule effective without waiting until 30 days following its publication in the Federal Register—see 5 U.S.C. 553(d)(3). In our view, such a delay would clearly be contrary to the public interest and the change herein shall be made effective September 1, 1972. All notices published or broadcast by renewal applicants after that date shall employ the amended text.

5. Therefore, IT IS ORDERED, That pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, effective

September 1, 1972, Section 1.580(m)(1)(iii) is amended as set forth in the attached Appendix.

6. IT IS FURTHER ORDERED, That the subject petition IS GRANTED to the extent indicated and in all other respects IS DENIED.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

APPENDIX

Section 1.580(m)(1)(iii) is amended by substituting 60 days for 30 days where it appears in the parenthetical material at the second sentence of the indented material.

As amended, the text of Section 1.580(m)(1)(iii) reads:

§ 1.580 Local notice of the filing of broadcast applications, and timely filing of petitions to deny them.

* * * * * * *

(m)(1) * * *

(iii) Notices for stations subject to paragraphs (c) and (d) of this section shall include the following statement, in addition to the information required under paragraph (f) (1) and (4) of this section.

> The application of this station for renewal of its license to operate in the public interest is required to be filed with the Federal Communications Commission no later than (insert here the date prescribed in § 1.539(a)). Members of the public who desire to bring to the Commission's attention facts concerning the operation of this station should write to the Federal Communications Commission, Washington, D.C. 20554, not later than (insert here the date 60 days after the last day for timely filing of the license renewal application). Letters should set out in detail the specific facts which the writer wishes the Commission to consider in passing on the application.
>
> A copy of the license renewal application and related material will, upon filing with the Commission, be available for public inspection at (state here the address where station records are made available for public inspection as required by § 1.526(d)) between the hours of —— and ——. (Regular business hours.)

* * * * * * *

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
GEORGIA SOCIALIST WORKERS CAMPAIGN,
ATLANTA, GA.
Concerning Equal Time for Political
Broadcast by Station WSB–TV.

AUGUST 22, 1972.

Mr. JOEL ABER, *Campaign Director,*
ALICE CONNER *for U.S. Senate,*
Georgia Socialist Workers Campaign,
P.O. Box 846,
Atlanta, Ga. 30301

DEAR MR. ABER: This will refer to your letter of August 2, 1972, requesting equal time for Alice Conner, Socialist Workers Party candidate for U.S. Senate from Georgia, to appear on WSB–TV, Atlanta, Georgia. You state that on Tuesday, August 1, 1972, at 8:30 p.m., WSB–TV broadcast a two-hour live television show to which all of Alice Conner's 18 Democratic and Republican opponents in the U.S. Senate were invited; that all of these 18 opponents appeared on the show; that Alice Conner was told by a representative of the station that she could not appear on the program; and that the reason given by the station was that she was not a candidate for the August 8 Democratic or Republican primary, but just for the general election in November. You contend that the show was obviously intended to present not merely the candidates of one or another party, but all of the candidates for the office of U.S. Senate since both Democrats and Republicans were on the same show and since the winner of the Democratic primary would be opposing the winner of the Republican primary in the general election; that since Georgia law requires that candidates of an organization must have received 20 percent of the vote in a previous general election in order for an organization to be declared a political party and thus have a primary election, it is not possible for a candidate to run in a primary unless that candidate is a Democrat or Republican; that Alice Conner was nominated to run for U.S. Senate by a democratic decision of the members of the Socialist Workers Party in Georgia; that the television show in question was clearly viewed by the people of Georgia as a confrontation among all the Senate candidates; and that the sponsors of several other confrontations around the State have recognized the legitimacy of Alice Conner's candidacy by putting her on the same panels as various Democratic and Republican candidates.

In its Letter to *Richard B. Kay, Esq.*, 24 F.C.C. 2d 426; affirmed, 143 U.S. App. D.C. 223, 443, F. 2d 638 (1970), the Commission stated:

> The Commission has held that primary elections or conventions held by one party are to be considered separately from the primary elections or conventions of other parties. Therefore, "equal opportunities" need only be afforded legally qualified candidates for nomination for the same office in the same party's primary or nominating convention. The Commission believes that Congress, in enacting Section 315 of the Communications Act, intended to assure equality of broadcasting opportunities only to candidates competing with each other in the same contest.

See Q. and A. 3, Section V., Public Notice of August 7, 1970, entitled "Use of Broadcast Facilities by Candidates for Public Office", a copy of which is enclosed.

Since Alice Conner was not a candidate for the Democratic or Republican primary for U.S. Senate, she did not have the right to "equal opportunities" under Section 315. In addition, it is clear that not all of the Democratic and Republican candidates for their party's nomination can be candidates of their party in the general election. To treat them as candidates in the general election prior to the primary election, which would be necessary in order to afford Alice Conner equal time, would be unrealistic. Therefore, upon the basis of your letter, no further action by the Commission is warranted.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
for Chief, Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Complaint by
CHARLES L. SMITH, PITTSFIELD, MASS.
Concerning Political Broadcast by Station
WBEC

AUGUST 22, 1972.

MR. CHARLES L. SMITH,
1287 North Street,
Pittsfield, Mass. 01201

DEAR MR. SMITH: This will refer to your letter of June 28, 1972. You state that you released a statement concerning your Democratic candidacy for the office of State Representative on Friday, June 23, 1972, to Radio Stations WBEC and WBRK and the Berkshire Eagle, a local newspaper; that WBRK carried your statement on all Saturday morning newscasts; that WBEC did not provide coverage of your statement on any of its Saturday morning newscasts; and that the Berkshire Eagle did not carry the story in its Saturday morning newspaper. You further state that the father of R. S. Jackson, Jr., a candidate for Republican nomination to the same office you are seeking, is the owner of Radio Station WBEC and that the owners of the Berkshire Eagle Newspaper are the former owners of WBEC. You state that the situation in Pittsfield concerning WBEC and its unfair handling of the news to the benefit of a particular candidate whose father happens to own the radio station should be a cause of great concern to the Commission and that it would be advantageous to the citizens of Pittsfield if the Commission could determine whether the local newspaper continues to have any financial interest in WBEC.

The selection and presentation of specific program material are responsibilities of the station licensee, and under the provisions of Section 326 of the Communications Act the Commission is specifically prohibited from censoring broadcast material and does not attempt to substitute its judgment for that of the licensee in regard to programming content.

You complain that WBEC suppressed information about your campaign statement by not broadcasting a news report concerning it on the station's Saturday morning newscasts. Such matters involve the news judgment of a licensee as to what items are newsworthy enough to be broadcast. The Commission will not attempt to substitute its judgment of news values for those of the licensee, nor will it make inquiry into such matters unless it receives significant extrinsic evidence of deliberate distortion, slanting, or suppression of news by a licensee, as, for example, statements by individuals who have personal

knowledge that a licensee ordered the news to be deliberately distorted or fabricated. The Commission's policy in this area is set forth in its *Letter to Mrs. J. R. Paul*, 26 F.C.C. 2d 591 (1969), a copy of which is enclosed.

The Commission also would be concerned if a licensee uses its facilities to promote its own private interest over the public interest obligation under which it must operate. Should you submit evidence that the licensee's choice of programming was influenced by private rather than public interest considerations, the Commission would give the matter further consideration. Regarding the newspaper coverage of your compaign, the Commission, of course, has no jurisdiction over newspaper coverage of news items. Also, a review of the Commission's files indicates that Eagle Publishing Company apparently has had no connection with WBEC since the license was transferred to the present licensee in 1961.

Since you are a candidate for public office you may be interested in the Commission's rules and regulations concerning the "equal time" provision of Section 315 of the Communications Act. Enclosed for your information are copies of the Commission's Public Notices of August 7, 1970, and March 16, 1972, entitled "Use of Broadcast Facilities by Candidates for Public Office." These documents contain the provisions of Section 315 of the Communications Act, the amendments enacted by the Congress, the Commission's rules and regulations promulgated thereunder and representative rulings and interpretations. This material should serve to inform you, generally, as to the applicability of Section 315 in given situations.

If a legally qualified candidate for public office appears on a station it is the responsibility of the licensee to provide "equal opportunities" to opposing candidates if they so request within the stated time period and if the "equal opportunities" provision is applicable under the circumstances. Certain programs, such as bona fide newscasts and several others, are exempt from the provisions of Section 315. As you will note, Q's and A's 10, 11, 12, 13, and 15 of Section III B of the 1970 Public Notice state that an appearance by a station owner, advertiser, employee, announcer or personality after he qualifies as a candidate for public office would constitute a use of the station facilities within the meaning of Section 315 if he is identifiable to a substantial degree by the listening or viewing audience. There is no prohibition of such appearances, but opposing candidates would be entitled to request "equal opportunities." Prior to a primary election, only the candidates for a particular party's nomination are considered to be opposing candidates for the purposes of Section 315. After the primary, the nominees of the respective parties seeking the same office in the general election are considered to be opposing candidates.

The determination of who is a legally qualified candidate is made by reference to the state law involved and this aspect is discussed in Section IV of the above Public Notice of 1970. In order for equal opportunities to apply, the request for equal time must be made within one week subsequent to the first prior "use" by the other candidate.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

WILLIAM B. RAY,
Chief, Complaints and Compliance Division,
Broadcast Bureau.

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Request by
SPRINGFIELD TELEVISION BROADCASTING CORP.,
SPRINGFIELD, MASS.
For Equal Opportunities Ruling Under
Section 315

AUGUST 17, 1972.

Mr. W. B. SAWYER, *Vice President,*
Springfield Television Broadcasting Corp.,
Television Station WWLP.
Box 2210.
Springfield, Mass. 02301

DEAR MR. SAWYER: This is in reply to your telegram received August 10, 1972. You state that subsequent to an editorial broadcast by you with respect to "radar operated speed traps," you offered time for contrasting views to the Massachusetts Commission of Public Safety and to the Board of Police Commissioners of Springfield; that the Board requested time to answer the editorial; that you agreed and the Board of Police Commissioners selected Board Member T. J. Trudeau as its spokesman; that subsequent to the taping of Mr. Trudeau's reply you learned that Mr. Trudeau is a legally qualified candidate in the Republican primary for the office of State Representative; and that there are two seats for which Messrs. Trudeau and J. Alfred Beaudette are the only announced candidates. You further state that the "Springfield Election Commission Office" has stated that write-in candidates for State Representative "will also be counted on election day," and that "as of this date there are no write-in candidates who have announced their intentions." Also, your counsel has advised the Commission that there are no formal requirements, such as the filing of a petition or the announcement of candidacy, which write-in candidates must meet in order for their votes to be counted.

You request a ruling as to whether Mr. Trudeau's appearance would constitute a use under Section 315 of the Communications Act of 1934, as amended, which would require you to afford equal opportunities to "the other candidates running in the Republican primary, both announced and write-in."

Section 315(a) states:

> If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting stations: . . . .

Under the facts which you have presented, it appears that Mr. Trudeau's use of your broadcast facilities would give his opponent the right to "equal opportunities" if he so requested. This is so since at

any time before the primary election other persons may become legally qualified candidates for the office in question via the write-in method, and, as long as that possibility exists, Messrs. Trudeau and Beaudette must be considered legally qualified opposing candidates for public office.

Staff action is taken here under delegated authority. Application for review by the full Commission may be requested within 30 days by writing the Secretary, Federal Communications Commission, Washington, D.C. 20554, stating the factors warranting consideration. Copies must be sent to the parties to the complaint. See Code of Federal Regulations, Volume 47, Section 1.115.

Sincerely yours,

ARTHUR L. GINSBURG,
Acting Chief, Complaints and Compliance Division
for Chief, Broadcast Bureau.

F.C.C. 72–738
80409

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In Re Application of GLYN J. RICE, MORTIMER DUNSFORD, JOHN W. WALKER, DONALD M. DONZE, LEO KLAUSER AND KERMIT ROEDEMER (TRANSFERORS) AND JAMES W. HIGGINS AND HAROLD L. WRIGHT (TRANSFEREES) Application for transfer of control of United Broadcasting, Inc., licensee of radio station KJCF–AM, Festus, Mo.	File No. BTC–6706

MEMORANDUM OPINION AND ORDER

(Adopted August 22, 1972; Released August 23, 1972)

BY THE COMMISSION: COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS H. REX LEE AND WILEY ABSENT; COMMISSIONER HOOKS NOT PARTICIPATING.

1. The above captioned application was accepted for filing November 4, 1971, and was granted by the Commission on April 19, 1972 (Mimeo No. 10607). Presently before us for consideration is: (a) a petition filed May 19, 1972, by the U.S. Department of Justice seeking reconsideration of that action;[1] and (b) an opposition thereto filed June 1, 1972, by the transferees Messrs. James W. Higgins and Harold L. Wright. The petition seeks to raise a substantial question of undue concentration of control of mass media due to transferee—Mr. Wright's ownership of a daily newspaper in Festus, Missouri the city of license of the subject KJCF–AM station.

2. The Department of Justice contends that our action of April 19, 1972, granting the subject transfer of control application will eliminate ". . . competition in the gathering and dissemination of local news, in the advertising of locally marketed goods and services, and on providing balance and variety of editorial comment on matters of local concern." (Pet. page 2). Petitioner foresees this elimination of competition due to Mr. Wright's ownership interest in KJCF–AM (50%) and in the Festus *News-Democrat* (editor and publisher). The petitioner states that Festus, Missouri "appears" to be commercially, politically, and socially distinct from St. Louis (approximately 27

[1] Petitioners also requests that the Commission stay its order of April 19, 1972, so that the grant may be reconsidered. The grant of a transfer of control will not be stayed pending action on a petition for reconsideration where the transfer has already been consummated (in this case consummated on May 12, 1972) and no irreparable injury is shown. The Commission retains jurisdiction over the application until it acts on the petition for reconsideration and could require restoration of the status quo. *Desert Telecasting Co.*, 1 RR 2d 325 (1963).

miles from Festus), having distinct needs for communication services which are not and will not be met by other mass media including those from St. Louis. Petitioner points out that the community leaders, consulted by the transferees in their community needs survey, emphasized a need for communicating information about local events, problems and activities, and states that: "This is simply not a market that non-local media can fully serve or in which non-local media can effectively compete." (Pet. pages 5 and 6). At present KJCF and the Festus *News-Democrat* are separately owned competitors and the petitioner alleges that through our grant of the subject application "the two will have effectively become one in respect both of ownership and control, and the competition for local advertising and the variety of viewpoints they offer will have been eliminated." (Pet. page 6). Petitioner states that the only mass medium in the community is a weekly newspaper, the *Jefferson County Press Times* published in Crystal City and other weeklies published in other towns of the county which "*may be presumed* to dwell most heavily on those towns' affairs and to have their circulation concentrated in them." (Pet. page 7, emphasis added). Petitioner concludes that Mr. Wright's ownership interest in these two media "would almost unavoidably" eliminate competition between KJCF and the Festus *News-Democrat* and confer monopoly power upon their common owner over local advertising as well as news and editorial comment.

3. Transferees contend that the Petition is procedurally defective because *inter alia* of Petitioner's failure to show "good cause" for lack of earlier participation as required by Section 1.106(b) of our Rules. On the merits, transferees state in opposition, that all petitioner's arguments were before the Commission and considered by the Commission when it granted the application on April 19, 1972. While petitioner argues that KJCF and the Festus *News-Democrat* provide the only coverage of local events in Festus, transferees assert that the Jefferson County *Press-Times* published in Crystal City, Missouri (adjacent to Festus separated only by a street) and radio Station KXEN–AM licensed to Festus and St. Louis on a hyphenated basis, also give coverage to local events and thereby provide adequate local competition for the Festus *News-Democrat* and KJCF–AM. Transferee points out that the *Press-Times*, although described in its application (filed in November 1971) as a "weekly", became a daily newspaper (Tuesday through Saturday) as of January 1, 1972. The transferees argue that competition among the local media for advertising revenue and news events in Festus will not be impaired through our action of April 19, 1972. They further assert that the existence of other newspaper and broadcast media from St. Louis and other communities in and around Festus will act to eliminate any possibility of concentration of control by Mr. Harold L. Wright's ownership interest in the Festus *News-Democrat* and KJCF. The Department of Justice did not file a reply pleading to the transferee's opposition.

4. Although we note that the Petition is procedurally defective for non-compliance with Section 1.106 of our Rules, in view of the serious policy questions here raised by the Department of Justice, we have

carefully considered the arguments on their merits. Upon careful consideration of the pleadings and all the information before us we conclude that the Department of Justice's petition for reconsideration must be denied.

5. The Commission presently has under consideration in Docket No. 18110 a proposed rule which will, if adopted, require the separate ownership of newspapers and broadcasting stations in the same market. We have no present rule or interim policy which prevents the common ownership of such media. However, we do consider the facts and circumstances in each case to determine whether there is a concentration of control of mass media contrary to the public interest. The facts and circumstances and allegations before us here raise no substantial question that a grant of the present application would create such a concentration of control or media monopoly in the Festus market.

6. Festus, Missouri, to which Station KJCF is licensed, lies approximately 27 miles south of St. Louis in Jefferson County. Festus and the adjacent town of Crystal City, which are separated by a single street, have a combined 1970 population of 11,428. The Festus market receives full primary service from 12 other standard broadcast stations including KXEN, licensed to Festus and St. Louis on a hyphenated basis, five FM stations which provide a 1 mv/m or better signal to all of Festus and three other FM's which provide such a signal to part of the city. Festus is within the Grade A contour of 5 St. Louis television stations and the grade B contour of a television station in Cape Girardeau. The Festus-Crystal City market is served by 2 daily newspapers: (a) the *Festus News Democrat* which is published daily except Saturday and Sunday with a circulation of 5,900 (this paper is owned by Mr. Wright a 50% owner of transferee) and (b) the *Jefferson County Press-Times* published in Crystal City which has a county circulation of 5000. The *Press Times* changed from a weekly to a daily (except Sunday and Monday) in January 1972.

7. In January 1970 we designated for hearing on issues of concentration of control of mass media, the application for acquisition of Station WYNX, one of two AM stations in Smyrna, Georgia where the transferees also controlled the community's only daily newspaper.[1] However, in the Smyrna case the transferees also controlled the only newspaper in nearby Marietta, Georgia, and a number of other neighborhood weeklies (a total of 24 newspapers in the greater Atlanta area) as well as an ownership interest in an AM station in Dalton, Georgia 60 miles from Smyrna. The case at hand is distinguishable from Smyrna since there is another daily newspaper in the Festus market and transferees have no interests in any other newspapers or radio stations in the area.

8. In other cases involving common ownership of newspapers and broadcast stations in the same community the Commission considered the media penetration in the particular market from newspapers and

[1] *Jonquil Broadcasting Co.* 18 RR 2d 243, 22 RR 2d 441, Initial Decisions of July 1, 1971 denying the application was affirmed by the Commission's Review Board on August 2, 1972, FCC 72 R–201.

broadcast stations located in nearby larger cities. Accordingly, in *WGRY*, Inc., 2 RR 2d 718 (1964) the Commission granted an assignment of license for one of the two standard broadcast stations licensed to Gary, Indiana to a company whose parent owned and published Gary's only daily newspaper. There the Commission found that the abundance of radio, television and newspaper services available from the Chicago area would eliminate a question as to whether a grant of the assignment would create a communications monopoly inconsistent with the public interest. In *Times Herald Printing Co.* 19 RR 2d 169 (1970) the Commission approved the assignment of license for a Dallas, Texas television station. The assignee had other media interests outside Texas but was also acquiring the assignor's daily newspaper also in Dallas. The Commission held no concentration of control issues were present in the application finding that Dallas was served by a "plethora" of media. *Elyria-Lorain Broadcasting Co.*, 5 FCC 2d 231 (1966) involved the transfer of control of the only AM and FM stations in Elyria, Ohio to one of the two newspapers in Elyria. The city of Elyria, like Festus, is a suburb of a large urban area (25 miles west of Cleveland, Ohio) and as such receives numerous radio and television signals from neighboring towns in addition to newspapers. Thus, it was concluded that the transfer of control would serve the public interest and "would not create a concentration of control of the media of mass communications in the vicinity of Elyria, Ohio" due to the abundance of other media serving the citizens in Elyria. In considering the penetration of Festus by the St. Louis newspapers and broadcasting stations in line with the above cases, it is clear that Festus and its environs receives service from many other competing media. In addition to the many broadcast services listed in paragraph 7 above, figures from the Audit Bureau of Circulation (February, 1972) show the circulation in Jefferson County of two St. Louis newspapers:

St. Louis *Globe Democrat*, Daily—6,527; Weekend—8,149
St. Louis *Post Dispatch*, Daily—4,632; Sunday only—12,389

Also as above stated as of January 1, 1972, the Jefferson County *Press-Times* published in Crystal City, Missouri is now a daily newspaper (it was formerly a weekly) which is published five mornings a week, Tuesdays through Saturdays, and it has a circulation of 5,000. In addition, Jefferson County is served by three other weekly newspapers with a combined weekly circulation of 11,341. (The circulation of Assignee's newspaper is 5,900). In view of all of the media which serve Festus, the Commission finds in this case that there does not exist any material or substantial questions of fact regarding the possible concentration of control of mass media that may develop through a grant of the subject application.

8. As noted by the transferees in their opposition, all the facts in connection with this transfer of control application were before us when we granted the application on April 19, 1972. Even adopting petitioner's argument that the relevant market should be Festus and not the greater St. Louis area, when considering the concentration of control aspects of this transfer, the Commission remains unpersuaded that

Mr. Wright's interests in KJCF and the Festus *News-Democrat* will result in an undue concentration of control of mass media or violate our multiple ownership rules (see Section 73.35(b)). Competition in the Festus area for local news, advertisers, and audiences will be maintained by the two daily newspapers and two standard broadcast stations in Festus in addition to area weekly newspapers and other broadcast media serving Festus. We conclude therefore, that the petition for reconsideration filed by the Department of Justice presents no new facts or substantial and material questions of fact, which would warrant our setting aside the grant of the subject application.

Accordingly, IT IS ORDERED, That the petition for reconsideration filed by the U.S. Department of Justice on May 19, 1972, IS DENIED, and our April 19, 1972 grant of the KJCF–AM transfer application is AFFIRMED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

F.C.C. 72-729

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of U.S. COMMUNICATIONS CORP. (TRANSFEROR) AND METROMEDIA, INC. (TRANSFEREE) For Transfer of Control of U.S. Communications of Ohio, Inc., licensee of Station WXIX-TV, Newport, Ky.-Cincinnati, Ohio.	File No. BTC-6731

MEMORANDUM OPINION AND ORDER

(Adopted August 9, 1972; Released August 15, 1972)

BY THE COMMISSION CHAIRMAN BURCH AND COMMISSIONER HOOKS ABSENT; COMMISSIONER JOHNSON DISSENTING; COMMISSIONERS H. REX LEE AND WILEY CONCURRING AND ISSUING STATEMENTS.

1. The Commission has before it the above-captioned application for transfer of control of U.S. Communications of Ohio, Inc., licensee of Station WXIX-TV (Channel 19), Newport, Kentucky-Cincinnati, Ohio from U.S. Communications Corp. to Metromedia, Inc.

2. Metromedia is presently the licensee of the following television stations:

Call letters	Location	ARB ranking according to net weekly circulation
WNEW-TV (Channel 5)	New York, N.Y.	1
KTTV-TV (Channel 11)	Los Angeles, Calif.	2
WTTG-TV (Channel 5)	Washington, D.C.	8
KMBC-TV (Channel 9)	Kansas City, Mo.	22
WTCN-TV (Channel 11)	Minneapolis, Minn.	16

Station WXIX-TV (Channel 19) is located in Newport, Kentucky-Cincinnati, Ohio, the 15th largest market. In view of Metromedia's ownership of five VHF-TV stations in the Top-Fifty television markets, its proposal to acquire another station in those markets is subject to the "compelling public interest showing" specified in the Commission's Report and Order released February 9, 1968 (12 RR 2d 1501).

3. As background, it should be noted that the Commission has twice waived its Top-Fifty Policy with respect to Metromedia. Most recently, the Commission approved Metromedia's acquisition of its fifth

VHF–TV station in the Top-Fifty markets.[1] In 1968, the Commission permitted Metromedia to acquire a losing UHF–TV station in the San Francisco market (KSAN). *Metromedia Inc.*, 12 FCC 2d 50, 12 RR 2d 561.[2]

4. There has only been one other instance where the Commission has waived its policy to permit the acquisition of a sixth TV station in the Top-Fifty markets. *Taft Broadcasting Company*, 17 FCC 2d 876, 16 RR 2d 263 (1969). Grant of that application was based on the following considerations:

1. The station was a losing operation;
2. The market was dominated by multiple owners and the networks;
3. Taft proposed to spend large sums of money for new equipment and programming; and
4. Taft proposed public affairs programming directly related to the needs of Negroes and the economically disadvantaged.

5. Here, as in the *Taft* case, the present licensee has sustained substantial losses while operating UHF Station WXIX–TV and it and its parent are unable to continue funding the station in view of its losses, as well as those of its other UHF stations. Similarly, Metromedia has established: 1) that there are a plethora of competing media, broadcast and print, penetrating the station's service area (Grade B contour)[3] and 2) that the market is dominated by television licensees with multiple communication media holdings locally as well as nationally, each of which is a VHF station affiliated with a national network.[4]

6. Metromedia has not, however, made any promises to initially spend large amounts of money on either equipment or programming, nor has it pledged to inaugurate substantial amounts of public affairs programming. Metromedia explains that in light of its experience with KSAN–TV, San Francisco (see note 2, *supra*) it will, in the beginning, use its broadcast experience and resources to make WXIX–TV a viable operation. Metromedia has submitted a plan for increased emphasis on local news once WXIX–TV has become economically viable. In addition, the assignee has pledged that, if and when WXIX–TV becomes profitable, it will devote a "meaningful share of those profits in public service efforts for the community".

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[1] WTCN–TV, Minneapolis, Minnesota, an independent station. FCC 72–525, FCC 2d (1972).

[2] This station was purchased for $1,000,000, however, Metromedia could not make it a financial success and donated it to the Bay Area Educational Television Association.

[3] 31 TV stations, 86 radio stations, 46 CATV systems, 30 daily newspapers, 11 Sunday papers, 103 weeklies and 4 "shoppers".

[4] The licensees and their holdings are: *Taft Broadcasting Co.*, AM & FM in the market and numerous broadcast holdings nationally; *Avco*, a 50 kw full-time AM in the market and multiple broadcast holdings nationally; and *Scripps-Howard*, daily newspaper in the market, a national chain of newspapers and other broadcast holdings nationally.

7. Metromedia will, in any event, broadcast the following programs to meet community needs:

1. "Wonderama"—a 3 hour, Sunday morning program for children.
2. "The New Zoo Parade"—a half hour, Monday thru Friday program for children designed to educate youngsters about some particular topic, such as "space" or "work".
3. "Alternatives"—a half hour monthly program which brings together youths from various backgrounds to discuss their problems.
4. "Community Bulletin Board"—daily at sign-on.
5. "Focus"—Members of various community organizations are invited to appear and make an informative statement about the function of their organization. These announcements will be a portion of the 70 public service announcements proposed to be broadcast each week.
6. Several religious programs.

In the area of news broadcasting, Metromedia proposes to air a network newscast on the weekends.

8. Thus, while all the factual elements in *Taft Broadcasting*, *supra*, are not present here, the Commission is nevertheless of the view that the "compelling public interest" requirement has been met. This case represents an almost classic example of the situation where Commission policy pronouncements come into conflict. On the one hand is the "Top-Fifty Market Policy". On the other, is the Commission's long effort in attempting to make UHF television a viable programming source to the public *and*, our often expressed desire to provide the public, wherever possible, with an attractive alternative to network programming.

9. In Cincinnati, WXIX–TV was finally constructed by a licensee with substantial financial resources behind it, but no previous experience in broadcasting.[5] It has been unable to make this UHF station a viable competitive factor in this market dominated by three network affiliated VHF stations. Metromedia, with its long experience in successful independent television operations, would appear to offer the best, if not the only, present means of establishing this UHF station as a viable independent programming source in the Cincinnati market.

10. In view of the foregoing we conclude that Metromedia has made a satisfactory compelling affirmative showing that the public interest would be served by its acquisition of WXIX–TV. Accordingly, based upon our determination that the transferee is fully qualified and that the public interest, convenience and necessity would be served thereby, IT IS ORDERED, That the above captioned application IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Secretary.*

[5] U.S. Communications Co., a subsidiary of The AVC Corporation, obtained the construction permit from D. H. Overmyer who had in turn obtained it from another.

CONCURRING STATEMENT OF COMMISSIONER H. REX LEE

I have concurred in the approval of Metromedia's acquisition of control of the licensee of Station WXIX–TV primarily because the transfer will permit the continued operation of the only independent programming source in the Newport-Cincinnati market. There is no dispute that the present licensee has incurred substantial operating losses, that its parent company is unable to continue its funding of station operations, especially in light of severe financial losses sustained by other licensee-subsidiaries, and that WXIX–TV's competitors are established VHF stations with network affiliations. In my own opinion, therefore, the present proposal represents an effective means of preserving an independent UHF station and of creating some meaningful competition in the market with the introduction of a corporation with successful experience in independent operations.

My concurrence, however, should not be interpreted in any way as a repudiation of the Commission's Top-50 Market Policy. As I've already noted before in a different context,[1] that policy should be encouraged for it promotes diversification of media viewpoints in the largest television markets and effectively inhibits the continued concentration of station ownership. However, I do not consider the policy to be immutable in all circumstances, and it is for the sake of preserving a viable programming source in the Newport-Cincinnati market that I have decided to concur in the grant of the WXIX–TV transfer application.

I am fully aware that Metromedia has not promised to spend large amounts on either equipment or programming and has not pledged to present substantial amounts of news and public affairs programming. Instead, it has candidly disclosed that its first order of business is to establish an economically viable station and that, thereafter, it will implement a long-range plan for increased emphasis on public service offerings. Nevertheless, I am willing to accept Metromedia's proposal in light of its past performance as a broadcast license-holder. I also intend to review Metromedia's stewardship of WXIX–TV when the station's renewal application is filed next year. Even though approval of the transfer application permits Metromedia to acquire another television station in the top-50 markets and to that degree works counter to our diversification policies, I do think that the proposal represents perhaps the only effective way of preserving a UHF programming source which is in serious financial straits.

CONCURRING STATEMENT OF COMMISSIONER RICHARD E. WILEY

I concur in the Commission's approval of this transfer application because I believe it offers perhaps the only realistic hope for a viable independent UHF television facility in a market dominated by VHF affiliates with other media connections.

[1] See my statement in regard to the application for transfer of control of Mount Hood Radio & Television Broadcasting Corporation, licensee of Stations KOIN, KOIN–FM and KOIN–TV, Portland, Oregon, Public Notice of October 1, 1971 (Report No. 10163).

It is apparent that the present licensee of WXIX–TV has incurred substantial financial losses in its operation and is unable to absorb further losses. Metromedia is willing to devote its financial resources and extensive experience as an operator of successful independent television stations to make WXIX–TV an economically viable UHF operation. In my opinion, the infusion of Metromedia's talent and resources may result in the creation of a truly competitive independent communications voice in the Newport, Kentucky-Cincinnati, Ohio market and thereby advance the Commission's long-standing policy of encouraging the growth and development of UHF television. Therefore, under the circumstances, I believe that a "compelling public interest" showing for approval of the transfer has been made.

Nevertheless, I am not completely satisfied with Metromedia's public service programming proposals. Accordingly, I intend to carefully review WXIX–TV's license renewal to be filed next year with the hope and expectation that, if improved financial conditions prevail, Metromedia will be able to augment its commitment in this regard.

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